

A BILL

To authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2003, 2004, 2005, 2006 and 2007, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Fishery Conservation and Management Amendments Act of 2003".

SEC. 2. AMENDMENT OF MAGNUSON-STEVEN'S FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.).

SEC. 3. DEFINITIONS.

(a) U.S. CITIZEN - Section 3(16 U.S.C. §1802)is amended by adding a new subsection (4) as follows: “(4) The term “U.S. citizen” means an individual who is a citizen of the United States, or a corporation, partnership, association, or any other entity that meets the U.S. ownership requirements contained in Section 12102(c)(1)and(2)of title 46, United States Code”, and renumbering existing subsections (4) through (45) of Section 3 accordingly.

(b) EEZ INNER BOUNDARY.- Section 3(11) (16 U.S.C. § 1802(11)) is amended by striking "line coterminous with the seaward boundary of each of the coastal States." and inserting "line-

"(A) coterminous with the seaward boundary of each of the several coastal States;

"(B) three marine leagues from the coastline of the Commonwealth of Puerto Rico;

"(C) three geographical miles from the coastlines of American Samoa, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands, respectively; and

"(D) the baseline from which the breadth of the territorial sea is measured in accordance with international law of any other Commonwealth, territory, or possession of the United States not referred to in subparagraph (B) or (C).".

(c) "OVERFISHED" DEFINED.- Section 3 (16 U.S.C. § 1802) is amended-

(1) in paragraph (29), by striking "terms 'overfishing' and 'overfished' mean" and inserting "term 'overfishing' means";

(2) by redesignating paragraphs (30) through (45) as paragraphs (31) through (46), respectively; and

(3) by inserting after paragraph (29) the following new paragraph: "(30) The term 'overfished', with respect to a stock or fishery, means a stock or fishery whose size is below the range that is likely to occur for a stock or fishery that has not been subjected to overfishing.".

(d) TECHNICAL AMENDMENT.- Section 3 (16 U.S.C. § 1802) is amended by striking paragraph (35), defining the term "special areas", that was-

(1) added by section 301(b) of the Act entitled "An Act to provide for the designation of the Flower Garden Banks National Marine Sanctuary", approved March 9, 1992 (Public Law No. 102-251; 106 Stat. 62); and

(2) given effect by section 405(a) of the Sustainable Fisheries Act (16 U.S.C. § 1802 note).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Section 4 (16 U.S.C. § 1803) is amended by striking paragraphs (1) through (4) and inserting the following new paragraph to read as follows: "There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this Act, \$269,391,000 in fiscal year 2003, \$296,697,000 in fiscal year 2004, and such sums as may be necessary for fiscal years 2005-7.”.

SEC. 5. TREATY ON PACIFIC COAST ALBACORE TUNA.

(a) FOREIGN FISHING UNDER TREATY; IMPLEMENTATION. - Section 202(e) (16 U.S.C. § 18212(e)) is amended by adding at the end the following new subsection:

"(6) TREATY ON PACIFIC COAST ALBACORE TUNA VESSELS.-

“(A) Notwithstanding section 201, foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto.

“(B) The Secretary of Commerce, with the concurrence of the Secretary of State, may promulgate regulations necessary to discharge the obligations of the United States of

America under the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed at Washington May 26, 1981, including its Annexes and any amendments thereto."

(b) TECHNICAL AMENDMENTS. -

(1) Section 201(a)(1) (16 U.S.C. § 1821(a)(1)) is amended to read as follows:

“(1) is authorized under subsections (b) or (c), section 202(e)(6), or section 204(e), or under a permit issued under section 204(d);”

“(2) Section 204(a)(16 U.S.C. § 1824 (a)) is amended by inserting “or the fishing is authorized under section 202(e)(6)” after “for such vessel”.

“(3) Section 307(2)(B) (16 U.S.C. § 1857(2)(B)) is amended by inserting "and foreign fishing permitted under section 202(e)(6)" after "under section 201(i)".

SEC. 6. MONITORING OF PACIFIC INSULAR AREA FISHERIES.

(a) WAIVER AUTHORITY.- Section 201(h)(2)(B) (16 U.S.C. § 1821(h)(2)(B)) is amended by striking "that is at least equal in effectiveness to the program established by the Secretary" and inserting "or other monitoring program that the Secretary determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement".

(b) MARINE CONSERVATION PLANS.- Section 204(e)(4)(A)(i) (16 U.S.C. § 1824(e)(4)(A)(i)) is amended to read as follows: "(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest,

bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;"

SEC. 7. CARIBBEAN COUNCIL JURISDICTION.

Section 302(a)(1)(D) (16 U.S.C. § 1852(a)(1)(D)) is amended by inserting "and of commonwealths, territories, and possessions of the United States in the Caribbean Sea" after "seaward of such States".

SEC. 8. NOTICE OF COUNCIL MEETINGS.

(a) REGULAR AND EMERGENCY MEETINGS.- The first sentence of section 302(i)(2)(C) (16 U.S.C. § 1852(i)(2)(C)) is amended-

(1) by striking "published in local newspapers" and inserting "provided by any means that will result in wide publicity"; and

(2) by striking "and such notice" through "wide publicity".

(b) CLOSED MEETINGS.- Section 302(i)(3)(B) (16 U.S.C. § 1852(i)(3)(B)) is amended by striking "notify local newspapers" and inserting "provide notice by any means that will result in wide publicity".

SEC. 9. FISHERY MANAGEMENT PLAN REQUIREMENTS.

Section 303(a)(5) (16 U.S.C. § 1853(a)(5)) is amended by inserting "harvest and processing revenues (by species), production costs, capital expenditures, and other fishing or processing expenses", after "number of hauls,".

SEC. 10. SUBMISSION OF ECONOMIC DATA.

Section 303(b)(7) (16 U.S.C. § 1853(b)(7)) is amended by striking "(other than economic data)".

SEC. 11 INDIVIDUAL FISHING QUOTAS

(a) Section 303 (16 U.S.C. § 1853) is amended --

(1) by striking subsection (d), and

(2) inserting the following --

“(d) INDIVIDUAL FISHING QUOTA PROGRAMS.

“(1) IN GENERAL. In addition to complying with the requirements of section 301(a) of this Act and subsections (a)(9) and (b)(6) of this section, any individual fishing quota program submitted and approved after the effective date of this Act --

“(A) shall provide for administration of the program by the Secretary in accordance with the terms of the plan;

“(B) shall, if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding; and, if established in a fishery that is determined by the Secretary or the Council to have excess capacity, contribute to reducing capacity; and

“(C) shall contribute to improved economic performance in the fishery.

“(2) ALLOCATIONS AND TRANSFERS. Any such individual fishing quota program shall -

“(A) establish procedures to ensure fair and equitable initial allocations, including consideration of (i) current and historical harvests, (ii) employment in the

harvesting and processing sectors, and (iii) investments in the fishery;

“(B) provide to the extent practicable that initial allocations maintain the basic cultural and social framework of the fishery, especially the roles of small owner-operator fishermen and the sustained participation of fishing communities that depend on these fisheries;

“(C) include measures to assist, when necessary and appropriate, entry-level and small-scale fishermen, captains, and crew, through set-asides of initial and secondary harvesting allocations, and including where appropriate a recommendation for the provision of economic assistance in the purchase of IFQ shares;

“(D) ensure that individual quota holders do not acquire an excessive share of the total quota in the program; and, to that end, establish a maximum share, expressed as a percentage of the total quota, that an individual quota holder is permitted to own;

“(E) prohibit any person other than a U.S. citizen or a permanent resident alien from acquiring quota;

“(F) authorize individual quotas to be held by or issued under the system to fishing vessel owners, fishermen, crew members, fishing communities, and other persons as specified by the Council;

“(G) consider, and provide for if appropriate, an auction system or other program to collect royalties for the initial distribution of allocations in an individual fishing quota program, provided that –

“(i) such a system is administered in such a way that the resulting distribution of quota shares conforms with the biological, social and economic goals of the program, and

“(ii) except to the extent such revenues are deposited in the Fishery Observer Fund established pursuant to section 403(e) hereof, the revenues generated through such a royalty program shall be deposited in the Limited Access System Administration Fund established pursuant to section 305(h)(5)(B) and available subject to annual appropriations;

“(H) establish a policy on the transferability of quota shares (through sale or lease), including a policy on any conditions that apply to the transferability of quota shares; and

“(I) establish a program to monitor transfers (including sales and leases) of quota shares in secondary markets.

“(3) COST RECOVERY. Any such individual fishing quota program shall --

“(A) develop a methodology and the means to identify and assess the management, science, data collection, observer coverage, and enforcement programs that are directly related to and in support of the program; and

“(B) provide, under section 304(d)(2) for a program of fees paid by quota holders that will cover the costs of management, science, data collection and analysis, observer coverage and enforcement activities.

“(4) PROGRAM APPROVAL, REVIEW AND ADMINISTRATION.--

“(A) Any group of fishermen, constituting at least 1/3 of those actively engaged in participation in a fishery for which an individual fishing quota program is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of an individual quota program for that fishery. Any such petition must clearly state the fishery to which it would apply.

“(B) Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition; and if he determines that the signatures on the petition represent at least 1/3 of the active participants in the fishery, the Secretary shall certify the petition to the appropriate Council or Councils.

“(C) Upon receiving a certified petition from the Secretary, the relevant Council or Councils with authority over the fishery may initiate consideration of a fishery management plan or amendment to establish an individual quota program for that fishery, under the procedures, guidelines and standards contained in this Act or other applicable law. A Council may not initiate a fishery management plan or amendment to establish an individual fishing quota program for a fishery unless the Secretary has certified an appropriate petition.

“(D) A Council may not submit to the Secretary for approval any fishery management plan or amendment that contains an individual fishery quota program unless the final version of the program has been approved by a majority

of the fishermen in a referendum conducted by the Secretary.

“(E) The Secretary shall determine procedures and eligibility requirements for the referendum referred to in subparagraph (D), and shall, prior to conducting a referendum, certify the eligible participants in the referendum. Any person who is actively engaged in participation in the fishery under consideration shall be eligible to participate in the referendum.

“(F) Any such individual fishing quota program shall--

“(i) include provisions for the regular monitoring and review of the operations of the program, with a formal and detailed review required five years after the establishment of the program and every five years thereafter which reviews shall be reported to the Secretary within 90 days after the review has been completed;

“(ii) include an effective system for monitoring the harvests of participants in the program; and

“(iii) include an appeals process for administrative review of determinations with respect to the Secretary’s decisions regarding administration of the individual fishing quota program.

“(5) An individual fishing quota program, or any permit that authorizes fishing, shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested, and may be revoked or limited at any time without compensation, if necessary for the conservation and management of the fishery.

“(6) For purposes of this subsection, any reference to a Council includes the Secretary

with respect to actions taken under Section 304 (g).”

(b) Section 304 (16 U.S.C. § 1854) is amended --

(1) by deleting the phrase “management and enforcement” in subsection (d)(2)(A), and inserting “management, science, data collection, observer coverage and enforcement”; and

(2) by deleting subparagraph (d)(2)(B), and inserting in lieu thereof the following –

“(B) Such fees shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested. With respect to a program under subparagraph (2)(A)(ii), such fees shall not exceed 3 percent of the ex-vessel value of fish harvested. With respect to a program under subparagraph (2)(A)(i), the fees to be established and collected by the Secretary under this paragraph are the following –

“(i) with respect to any initial allocation under a limited access system established after the effective date of this Act, an initial allocation fee in an amount, determined by the Secretary, equal to 1 percent of the ex-vessel value of fish authorized to be caught in the first year under an individual quota, that shall be collected from the person to whom the individual fishing quota is first issued.

“(ii) an annual fee in an amount, determined by the Secretary, not to exceed 3 percent of the ex-vessel value of fish transferred, based upon the most recent year in which the quota was fished, that shall be collected

from the holder of the individual fishing quota share.

“(iii) a transfer fee in an amount, determined by the Secretary, equal to 1 percent of the average ex-vessel value, over the previous year, of the fish that are transferred, that shall be collected from a person who permanently transfers the individual quota share to another person.”

(c) Section 304 (16 U.S.C. § 1854) is amended by deleting everything in paragraph 304(d)(2)(C)(1) after “section 305(h)(5)(B)”.

SEC. 12. ACTION BY THE SECRETARY.

(a) REVIEW OF PLANS AND INITIAL REGULATIONS.- Section 304(a)(1) (16 U.S.C. § 1854(a)(1)) is amended--

(1) in the introductory language, by inserting "and any proposed implementing regulations prepared under section 303(c)(1)," before "the Secretary shall-";

(2) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(3) by inserting before subparagraph (B), as so redesignated, the following new subparagraph:

"(A)(i) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding whether it is-

"(I) consistent with the national standards, the other provisions of this Act, and other applicable law; and

"(II) sufficient in scope and substance to warrant review under this

subsection;

"(ii) if that decision is affirmative with respect to both subclauses (I) and (II) of clause (i), implement subparagraphs (B) and (C) with respect to the plan or amendment; and

"(iii) if that decision is negative with respect to either subclause (I) or (II) of clause (i), disapprove the plan or amendment and notify the Council in writing of the disapproval and of those matters specified under paragraph (3)(A), (B), and (C) with respect to the plan or amendment;" and

(4) by amending subparagraph (C), as so redesignated, to read as follows:

"(C) by the 15th day following transmittal of the plan or amendment, and proposed implementing regulations, publish in the *Federal Register*-

"(i) a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 50-day period beginning on the date the notice is published; and

"(ii) any proposed implementing regulations that are consistent with the fishery management plan or amendment, this Act, and any other applicable law, for a comment period of 50 days, except that the Secretary may include such technical changes to the Council's proposed regulations as may be necessary for clarity, along with an explanation of those changes.".

(b) REVIEW OF PROPOSED MODIFICATIONS.

(1) Paragraph (1) of section 304(b) (16 U.S.C. § 1854(b)) is amended to read as follows:

"(1)(A) Upon transmittal by the Council to the Secretary of regulations proposed under section 303(c)(2), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

"(B) If the Secretary determines that the regulations are consistent, the Secretary shall, within 15 days of transmittal, publish such regulations in the *Federal Register*, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days, unless the Secretary finds good cause not to publish a notice of proposed rulemaking in accordance with section 553 of title 5, United States Code.

"(C) If the Secretary determines that the regulations are not consistent, the Secretary shall, within 15 days of transmittal, notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law."

(2) Section 304(b)(2)(16 U.S.C. § 1854(b)(2)) is amended by striking "paragraph (1)(B)" and inserting "paragraph (1)(C)".

(3) Section 304(b)(3) (16 U.S.C. § 1854(b)(3)) is amended by striking "paragraph (1)(A)" and inserting "paragraph (1)(B), and within 45 days after the end of the comment period under subsection (a)(1)(C)".

(4) Section 304(b)(16 U.S.C. § 1854(b)) is amended by adding at the end the following

paragraph (4):

"(4) For regulatory actions, other than those proposed by a Council under section 303(c), that are taken in accordance with a fishery management plan, the Secretary shall process the actions in accordance with the plan. If the Secretary determines that the actions are consistent with the plan, this Act, and other applicable law, the Secretary shall publish in the *Federal Register* a notice of the actions. The Secretary may find good cause not to publish a notice of proposed rulemaking in accordance with section 553 of title 5, United States Code."

SEC. 13. REBUILDING OVERFISHED FISHERIES

(a) Section 304(e)(1)(16 U.S.C. § 1854) is amended-

- (1) by striking "or" and inserting a "comma" after "that are overfished";
- (2) by striking the "period" and inserting ", or have overfishing occurring." after "are approaching a condition of being overfished"; and
- (3) by adding "and overfished" after "using the criteria for overfishing".

(b) Section 304(e)(3) (16 U.S.C. § 1854) is amended by deleting "Within one year of an identification under paragraph (1)" and by inserting in its place "Within one year of an identification that a fishery is overfished or approaching a condition of being overfished,".

SEC. 14. EMERGENCY REGULATIONS.

(a) LENGTHENING OF SECOND EMERGENCY PERIOD.- Section 305(c)(3)(B) (16 U.S.C. § 1855(c)(3)(B)) is amended by striking "180 days" the second time it appears and inserting "186

days".

(b) TECHNICAL AMENDMENT.- Section 305(c)(3)(D) (16 U.S.C. § 1855(c)(3)(D)) is amended by inserting "or interim measures" after "emergency regulations".

SEC. 15. JUDICIAL REVIEW OF CERTAIN ACTIONS OF THE SECRETARY.

Section 305(f) (16 U.S.C. § 1855(f)) is amended-

- (a) in paragraph (1), by inserting "or becomes final agency action" after "*Federal Register*";
- (b) in paragraph (2), by inserting "and actions that determine eligibility under a limited access system" after "recreational fishing"; and
- (c) in paragraph (3)(B), by inserting "or action" after "regulations".

SEC. 16. INCREASE IN MAXIMUM PENALTIES.

(a) CIVIL PENALTIES.- Section 308(a) (16 U.S.C. § 1858(a)) is amended by striking "\$100,000" and inserting "\$200,000".

(b) CRIMINAL PENALTIES.- Section 309(b) (16 U.S.C. § 1859(b)) is amended

- (1) by striking "\$100,000" and inserting "\$200,000; and
- (2) by striking "\$200,000" each place it appears and inserting "\$400,000".

SEC. 17. SUBPOENA POWER FOR INVESTIGATIONS.

Section 308(f) (16 U.S.C. § 1858(f)) is amended-

(a) in the first sentence -

- (1) by inserting "investigation or" before "hearing"; and